

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

DJAFAR SHAMS,

No. C 07-2463 SBA

Petitioner,

ORDER TO RESPOND

v.

MICHAEL CHERTOFF, *et al.*,

Respondents.

Petitioner Djafar Shams has submitted a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 [Docket No. 1]. Shams is a native and citizen of Iran. Shams has been residing in the United States since 2000. Petitioner had applied for asylum, but this was denied. He was ordered removed from the country on June 16, 2003. The travel documents necessary for his removal, however, are lacking, and this order has not been carried out. Shams applied for a passport from Iran in March 2004, but he has yet to receive it or other travel documents.

On October 27, 2006, Shams was detained and he has remained in detention at the Santa Clara County Jail in San Jose, California. Under the “post-removal-order” detention statute, 8 U.S.C. § 1231(a), an alien may detained for 90 days. Aliens may be detained beyond this 90 days only for “a period reasonably necessary to bring about that alien’s removal from the United States.” *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001); *see also Ma v. Ashcroft*, 257 F. 3d 1095, 1105 (9th Cir. 2001) (“In cases in which an alien has entered the United States and there is no reasonable likelihood that a foreign government will accept the alien’s return in the reasonably foreseeable future, ... [the government is not permitted] to hold the alien for more than a reasonable period beyond that removal period”). The presumptively reasonable period of time is six months. *Zadvydas*, 533 U.S. at 701. Shams has been detained for longer than six months; thus his detention is no longer presumptively reasonable, absent some rebuttal by the government.

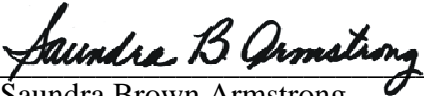
Accordingly, pursuant to 28 U.S.C. § 2241, the Court ORDERS as follows:

1. Preliminary examination of petitioner’s application for a writ of habeas corpus establishes that summary dismissal is not warranted.

- 1 2. The clerk shall deliver copies of the petition and this order by certified mail to the respondents
2 and the respondents' attorney, the United States Attorney for the Northern District of California.
The clerk shall also serve a copy of this order on the petitioner.
- 3 3. The respondents shall file an answer no later than July 17, 2007.
- 4 4. If the petitioner so chooses, he may file a reply no later than August 17, 2007.
- 5 5. The respondents' answer shall respond to the legal and factual contentions raised in the petition.

6 IT IS SO ORDERED.

7
8 May 17, 2007



Sandra Brown Armstrong
United States District Judge